

National Science Foundation

§ 650.7

grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the grantee agrees that the Secretary of Commerce may review the grantee's licensing program and decisions regarding small business applicants, and the grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the grantee could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(1) *Communications.* All communications required by this Patents Rights clause must be submitted through the iEdison Invention Information Management System maintained by the National Institutes of Health unless prior permission for another form of submission is obtained from the Patent Assistant at patents@nsf.gov or at Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

(b) When the above Patent Rights clause is used in a funding agreement other than a grant, "grant" and "grantee" may be replaced by "contract" and "contractor" or other appropriate terms.

(Approved by the Office of Management and Budget under control number 3145-0084)

[57 FR 18053, Apr. 28, 1992, as amended at 59 FR 37438, July 22, 1994; 62 FR 49938, Sept. 24, 1997; 70 FR 43071, July 26, 2005]

§ 650.5 Special patent provisions.

At the request of the prospective awardee or on recommendation from NSF staff, a Grants or Contracts Officer, with the concurrence of the cognizant Program Manager, may negotiate special patent provisions when he or she determines that exceptional circumstances require restriction or elimination of the right of a prospective awardee to retain title to any subject invention in order to better promote the policy and objectives of chapter 18 of title 35 of the United States Code or the National Science Foundation Act. The Grants or Contracts Officer will prepare the written determination required by § 401.3(e) of title 37 of the Code of Federal Regulations and assure that appropriate reports are made to the Secretary of Commerce and Chief Counsel for Advocacy of the Small Business Administration as required in § 401.3(f). Unless doing so

would be inconsistent with an obligation imposed on the Foundation by statute, international agreement, or pact with other participants in or supporters of the research, every special patent provision will allow the awardee, after an invention has been made, to request that it be allowed to retain principal rights to that invention under § 650.12(e) of this regulation.

§ 650.6 Awards not primarily for research.

(a) Awards not primarily intended to support scientific or engineering research need contain no patent provision. Examples of such awards are travel and conference grants.

(b) NSF fellowships and traineeships are primarily intended to support education or training, not particular research. Therefore, in accordance with section 212 of title 35 of the United States Code, the Foundation claims no rights to inventions made by fellows or trainees. The following provision will be included in each fellowship or traineeship program announcement and made part of the award:

INTELLECTUAL PROPERTY RIGHTS

The National Science Foundation claims no rights to any inventions or writings that might result from its fellowship or traineeship awards. However, fellows and trainees should be aware that the NSF, another Federal agency, or some private party may acquire such rights through other support for particular research. Also, fellows and trainees should note their obligation to include an Acknowledgment and Disclaimer in any publication.

§ 650.7 Awards affected by international agreements.

(a) Some NSF awards are made as part of international cooperative research programs. The agreements or treaties underlying many of these programs require an allocation of patent rights different from that provided by the Patent Rights clause in § 650.4(a). Therefore, as permitted by § 401.5(d) of the implementing regulations for the Bayh-Dole Act (37 CFR 401.5(d)), paragraph (b) of the standard Patent Rights clause in § 650.4(a) has been modified to provide that the Foundation may require the grantee to transfer to a foreign government or research performer